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THE STATE OF WYOMING

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December 18, 1996

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Initial Comments of the Wyoming Public Service Commission on the Federal-State Joint Board's Recommended Decision in CC Docket No. 96-45

Sirs:

Enclosed herewith are the original and four copies of the referenced Initial Comments of the Wyoming Public Service Commission. Please file and distribute the same.

Thank you for your kind assistance with this matter.

Yours very truly,

STEPHEN G. OXLEY
Secretary and Chief Counsel

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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DEC 19 1996

FCC MAIL ROOM

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on Universal Service	)	
	)	

COMMENTS OF THE WYOMING PUBLIC SERVICE COMMISSION

The Wyoming Public Service Commission (WPSC) hereby submits its initial comments in response to the request of the Common Carrier Bureau of the Federal Communications Commission (FCC) for comments on the universal service Recommended Decision released in the above-captioned matter on November 18, 1996 (DA 96 1891).

Introduction. The federal Telecommunications Act of 1996 (Act) requires federal and state regulators to meet the challenge of universal service. The Act contemplates a rapid transition to a more open and competitive telecommunications marketplace; but it carefully emphasizes, at section 254(b), that advanced telecommunications is of little value if it is not available [i] at affordable rates [ii] in all regions of the country. Under the Act, urban and rural services should be reasonably comparable and all providers who benefit from a more universally available and more extensive telecommunications system should contribute to universal service. The Act explicitly, and wisely, recognizes the special needs of schools, libraries and health care providers, and their special abilities to apply telecommunications technology for the public good if more people are connected to the system. The Act clearly requires federal and state regulators to provide for these special intensive users, but it likewise requires us to concentrate our serious efforts on the general question of universal service.

Most of the smaller local exchange companies in Wyoming are now conducting substantial plant upgrades; and, in starting, they have relied on the existing level of universal service support, which appears to be in serious jeopardy. Even considering the Act's rural high-cost safeguards, the Recommended Decision can be read as diminishing support for rural, high-cost service providers. Below we have documented the magnitude of the problem for these companies and their ratepayers. It has caused a number of such providers in Wyoming to reconsider plans for future infrastructure upgrades, even before the final federal rule. Some rural LECs have reacted by suspending their 1997 infrastructure and service improvement initiatives. While we agree that universal service funds should not bankroll expensively overbuilt communications systems, we do not believe that construction which brings the Act's desired "comparable" telecommunications services to rural high-cost areas is, by any measure, an abuse under the Act. The local service providers' responses to this perceived significant financial risk illustrates the great power of universal service support as a regulatory tool which must be carefully and thoughtfully used. Below we have made a concrete proposal to identify unfairly impacted companies and alleviate the problem during the "freeze."

The WPSC does not believe that a rulemaking response to the mandates of the Act which creates or encourages the persistence of unmitigated high rates in some rural and high cost-to-serve areas satisfies the mandate of the Act. The Congress did not intend to give regulators, federal or state, the power to interpret away the Act's requirement that rates be affordable in all regions of the country for services that are reasonably comparable. The WPSC submits that any universal service system which, when applied, results in the perpetuation of pockets of high rates for local exchange service runs contrary to the Act no matter how appealingly neutral, or intellectually symmetrical it might appear on paper. Furthermore, if no single, all-encompassing universal service formula can produce the necessary results throughout the nation, then the funding mechanisms must be allowed to vary as needed to solve problems. The WPSC submits that we must recognize the great variations throughout the United States in the factors which drive costs and that we must not allow ourselves to settle for unfair results in the name of simplifying the mechanism. The Act mandates a fair result, not simply a symmetrical approach to one.

Our perspective is that of an essentially rural and relatively sparsely populated state which has some of the highest cost to serve exchanges and customers in the nation. It is a state in which demands for more sophisticated telecommunications services are being seen not only in our cities but also in the most sparsely populated rural areas of the state. Wyoming telecommunications service providers have taken aggressive steps in modernizing their respective telecommunications systems, but the job is not yet finished and the universal service funding mechanism should not foreclose the necessary technological upgrading and system growth.

1. **The principle of competitive neutrality.** Competitive neutrality is an appealing concept, but its implementation could be a matter of grave concern. As we have stated before in our initial comments and reply comments in this docket, Wyoming contains some of the highest cost rural exchanges in the country. Many of Wyoming's exchanges cover large, remote areas characterized by low subscriber density. The Act encourages the development of competitive markets, and we should seek to achieve that competitive neutrality which fosters competition. However, this beneficial neutrality should not be confused with the type of irresponsible lassiez-faire attitude that would allow service providers to allocate all of their resources to only the nation's more appealing and lucrative markets. The Act recognizes that telecommunications is still an industry in which, because of its critical contribution to the lives and businesses of all citizens, the participants bear a measure of social responsibility. If the desired result were truly unfettered competition, the Act would simply have repealed all laws governing the conduct of

the telecommunications business in the United States. It did not do that; and we, as regulators, therefore cannot suppose that the Act intended such a simplistic and negative result to be national policy. The market is clearly not to be left entirely to its own devices in providing for the telecommunications needs of our citizens.

The idea of competitive neutrality should be simply an articulation of the generally accepted idea that potential competitors in a local exchange should be able to compete for customers on a level playing field, and the WPSC could support such a concept. However, "competitive neutrality" might be more complicated. Thus, if it represents acceptance of the idea that diminished emphasis on affordable universal service in rural, high-cost areas of the nation is acceptable if market forces dictate such a result, then the concept runs against the express policy of the Act and should not be allowed.

The test for "good" competitive neutrality is therefore simple. Does it appear reasonably calculated to implement the Act, including the safeguards it puts in place for universal service to high cost rural areas? Do the universal service regulatory decisions taken under the Act really result in improved infrastructure, better service and reasonably affordable telecommunications service throughout the country? Do the actions of regulators have unintended negative effects on telecommunications customers and on the activities of service providers?

We believe that these tests are reasonable and grounded in experience. Although the Act contains several rural safeguards, the Joint Board's Recommended Decision has already, even before the final rules have been set, produced negative operational, financial and planning impacts on rural, high cost local exchange service providers in Wyoming. The Recommended Decision appears to result in the loss of a predictable universal service support mechanism (which the Act requires); and this has caused a number of largely rural Wyoming LECs to subject their plans for future plant investments and facilities upgrades to serious reconsideration. *On the strength of the Recommended Decision*, some rural LECs have suspended all 1997 construction and service improvement activities.

The WPSC agrees that universal service support mechanisms should not be used to construct "gold plated" (overengineered and overbuilt) telecommunications systems in a newly anticompetitive environment. That would be an abuse. However, it is not an abuse *as a matter of law* to undertake a modernization program designed to bring "comparable" telecommunications services to rural high-cost areas of the nation. Specifically, some Wyoming LECs are concerned with the Joint Board's recommendation that universal service support be frozen at 1997 *support* levels, remembering that 1997 USF payments are based on 1995 operating results and financial data. A majority of the independent local exchange companies in Wyoming are in the process of important plant upgrading programs requiring substantial investment. These programs have been undertaken with reliance on the existing level of USF support, and that level of support is seriously threatened under the Recommended Decision. These companies' cost data and operating results have changed dramatically since the end of 1995. With a frozen USF based on out-dated information, these rural LECs certainly can no longer prudently continue their upgrade and investment efforts and may be punished for some conscientious upgrading that has already taken place.

Life in a competitive telecommunications environment is full of uncertainties, and the Act should not be construed as a welfare system for local exchange companies. However, the Act should also not be construed as punishment for these companies which have initiated upgrades under a set of support and funding guidelines which may no longer exist. If the evil of gold plating is to be prevented, we abdicate our regulatory responsibility if we crudely sweep away the good while stamping out the bad. If we cannot devise a method of sufficient sophistication that identifies the difference, we should admit this as a failure rather than enacting it as a rule which produces unwanted casualties.

The telecommunications industry in Wyoming furnishes many actual examples of independent local exchange companies which would probably feel the damaging effects of the Recommended Decision if it were to continue in its current form. Of the thirteen independent local exchange companies in Wyoming, twelve currently receive federal high cost fund assistance; and all of these companies are likely to suffer such negative effects. The actual annual dollar amount of the problem varies, but several will face real challenges to their ability to continue to provide telephone services (the continued ability of these LECs to meet debt and equity requirements and to maintain safe and reliable telephone service is not at all certain under the proposed rules and guidelines). The problem is not abstract. Several Wyoming LECs are under regulatory mandates to upgrade facilities and install modern equipment to replace technology and operating conditions in place since the 1950s and 1960s. The table below illustrates the problems which some Wyoming local exchange companies actually face.

Company	I	II
	interstate revenue and support as a percentage of total 1995 operating revenues	monthly rate impact of the Recommended Decision: first two years of the freeze period
Company A	52.64%	†
Company B	74.09%	$14.68
Company C	56.10%	$13.72
Company D	48.22%	$13.95
Company E	59.28%	†
Company F	57.75%	$16.27
Company G	61.00%	$11.20

† The data which is now unavailable will be furnished with our reply comments.

Column I clearly shows that Wyoming LECs depend to a large extent on interstate sources of revenue.

Column II shows the actual per month impact of the Recommended Decision on the local rates of five independent local telephone companies in Wyoming during the first two years of the proposed freeze period (with the impact of the phasing out of the Dial Equipment Minutes (DEM) weighting factor included). These results are based on actual plant investments and facility upgrades now either accomplished or under contract for completion since 1995.

The figures in these tables are also important for what they do not show. They do not include any of the additional impacts which can be expected from potential changes in the interstate Carrier Common Line rate, from pending federal access charge reform, or from the phase out of long term support also recommended by the Joint Board. These results can hardly be viewed as maintaining and promoting universal service as is intended by the Act.

The WPSC believes that these specific, real situations facing the rural, high cost LECs in Wyoming warrant exceptions to the "one size fits all" proposals contained in the Recommended Decision. The currently proposed freeze of federal universal service support amounts at 1995 investment and cost levels equally affects many other rural LECs throughout the United States. For the three-year transition period, we propose that, if an independent rural, high cost LEC has invested or has commitments to invest, since December 31, 1995, amounts equal to twenty percent (20%) or more of its telecommunications plant in service (rate base), it be automatically exempted from the freeze rule.

These effects run directly contrary to the Act's stated policies of maintaining affordable service and encouraging the deployment of new technology. If rural America represents a special case, we should recognize this and treat the threatened exchanges accordingly -- and specially -- if that is what it takes. If one size does not fit all, then perhaps we need two sizes.

We should remember the lessons taught by other supposedly "competitively neutral" experiments in introducing marketplace vigor into a previously regulated environment because some of these actions have had a detrimental affect on rural America. Airline deregulation followed by the virtual elimination of airline service in less attractive markets should be a lesson. The example is not perfect because one can compensate for lost airline service much more easily than one can for lost or poor telephone service. In any event, a national policy which discourages responsible development of telecommunications service in rural America is not good policy.

To a certain extent, the Joint Board seemed to acknowledge the faults and disadvantages which would be visited on rural, high cost LECs if they were forced to use a proxy model to determine their costs of providing service because it found none of the proxy models presented to it to be acceptable. Therefore, for at least three years, rural LECs are not required to use a proxy model and may use current levels of actual embedded costs. We are concerned that a later mandate to rural LECs that they must use a proxy model will rob them of any assurance that the modeling exercise will produce results that meet the "specific, predictable and sufficient" principles necessary for a true universal service support program. There is sufficient reason for alarm. Independent analyses have already been performed comparing the costs results of the BCM2 and the Hatfield models with actual USF cost data reported to the National Exchange Carrier Association (NECA). Not surprisingly, the cost data results for rural high cost LECs produced by the proxy models have differed significantly from the actual costs of these LECs. The models, in short, have not produced a sufficient substitute for reality. Compounding the problem, even under comparable assumptions and even with *identical* data inputs, the Hatfield model and BCM2 model produce substantially different results.

It is also not surprising that the models have succeeded in understating the costs of rural high cost LECs. The WPSC cannot emphasize strongly enough that the Act is intended to produce comparable results in urban and rural areas. The Act was not intended to produce an environment in which the regulatory system could be gamed to effectively ignore the less populous regions of the nation. The Act is not -- and should not be allowed to become -- a populist vehicle for diverting all the benefits of competitive telecommunications market development to the markets which are largest in size or the most easily served.

Given this situation and its dangers which we have seen to be very real and immediate, state commissions must be allowed to participate fully and meaningfully in workshops and all other proceedings leading to further development of acceptable proxy models. Unfortunately, the Joint Board's recommendation contains many issues on which it is difficult to comment effectively without actually knowing either what proxy model is proposed for final implementation or what results it might produce. The WPSC can not accurately assess the impact of the federal universal support program on Wyoming without knowing how much federal support funding is intended to be provided. These considerations, taken together with the uncertainties regarding pending access charge reforms and separations rules reviews, make it impossible to comment meaningfully on the impact on rural high cost LECs while they are using actual embedded costs as they are transitioning to the mandated but uncertain use of a proxy model. For these reasons, state commissions should be given a major role in the further development of the concept of appropriate proxy modeling.

The FCC and the Joint board should seriously consider whether it is a productive exercise to insist that a single model must be the only result. To date, "one size" does not fit all and gives every indication that the fit might be disastrous. This suggests that there may have to be an accommodation for the very different needs of rural high cost areas. Put another way, if a model favoring the needs of rural high cost areas worked a hardship on larger, more populous regions, advocates from these neglected areas would be right in arguing that their needs should be reasonably met. Again this underscores the Act's emphasis on a federal/state partnership and in utilizing local expertise on complex issues having critical local, factual elements. For these reasons, state commissions should continue to have a major role in any further development of the concept of appropriate proxy modeling.

2. **Provisions for low-income consumers.** The WPSC believes that it is futile to set a single baseline amount for the support of low income consumers at this time. Costs vary throughout the nation to such an extent that the suggested $5.25 baseline amount would solve the problems of some customers in low cost areas while it would be little more than an insult in areas in which costs are high enough to make a telephone unaffordable even after this token amount is provided. The FCC can avoid its "unintended consequence" of too much federal support being siphoned off by more populous states with their own lifeline programs by constructing a mechanism which examines actual underlying costs in various jurisdictions and the other monies available there to apply against the telephone bills of the needy.

A realistic approach accepts that there are differences among the various states and attempts to deal fairly in the spirit of the Act with these differences on the available facts provides some hope of rational resolution. The sometimes overwhelming complexity of the national telecommunications market should not dissuade us from taking the right course of action even if it is not the simplest and even if it will cause some criticism from those who stand to benefit most from an unexamined and thus uncontrolled largesse.

3. **Reliably identifying high-cost schools and libraries which require increased support through greater discounts.** Mechanisms exist today which provide useable guidelines for identifying high cost areas for universal

service support purposes. Remembering that schools and libraries are local exchange service customers too, it would be relatively simple to use these existing guidelines at first to identify high cost schools and libraries which should be eligible for additional discounts. Those guidelines could be adjusted to recognize the fact that schools and libraries may be relatively heavier users of more advanced services.

Schools and libraries should be required to pay a portion of the cost of discounted services to encourage prudent expenditures by eligible institutions. While schools and libraries should be encouraged to make efficient and effective purchase decisions, they should have great flexibility in selecting and purchasing the package of services best suited to their respective needs. This flexibility to select the most appropriate services will help to maximize the value provided by the universal support system and help to minimize the inefficient use of services. Again, local expertise should be brought to bear to allow expert educators and librarians to select the most needed services from among the options available to them locally -- realizing that all suppliers and all services will not be identical throughout the nation. As regulators, we should avoid making a list of "approved" technologies or services; and we should accord them the deference they deserve as professionals in their fields. Again, this is a case of a vast and powerful national communications infrastructure which is shaped best by numerous informed individual choices.

The FCC should not set requirements for state discounts for schools or libraries. The Joint Board recommends that, in order for a state to qualify for federal funding, its discount must at least equal the federal discount. States which do not at least duplicate the federal discount program would punish their local schools and libraries. There are several flaws in this approach to the problem. First, if the federal program is uniform and national in scope, there will be places in which its fit with local conditions will not be satisfactory. In this case, mirroring the federal program may only compound a problem. Second, the Act does not authorize the FCC to require certain state discounts in order to be eligible for federal support. It is completely within the competence of the states -- and not the federal government -- to determine the discounts which are appropriate and necessary for intrastate services, based in part on the intrastate rates which remain under state jurisdiction. Part of the strength of the Act is that it relies on the states for local expertise where, as here, it can be reliably brought to bear on state-level problems. The Act intends to create a federal/state partnership and does not intend to turn states into clients of the federal government.

4. **Special provisions for health care.** In Wyoming, health care services and facilities for both acute and chronic care are concentrated in our larger cities (and there are only two cities with a population of 50,000 persons in the state). Smaller communities have emergency care capabilities to various extents, but physicians resident in smaller communities are relatively uncommon and have generally been replaced by local clinics visited periodically by a physician. Rural hospitals, where they exist, do not generally offer the range of care options available in larger cities. The exact scope of services that should be included in the additional "necessary" services list should be determined by the relevant health care providers based on actual local needs. They should not be determined, except in a very general way, by utility regulators. For example, a clinic visited periodically by a physician could have needs that differ somewhat from those of a metropolitan hospital.

One encouraging aspect of advanced telecommunications technology is the ability to use high speed data transmission for remote diagnosis through the reading of x-rays and real time patient monitoring. Trials of remote reading of x-rays show that low data speeds and the relative lack of traffic have produced per unit costs that are relatively large. Therefore, we conclude that secure, high quality, high speed transmission capabilities are absolutely essential components of modern health care in rural communities.

If rural medicine requires high bandwidth, it does not always offer intensive utilization of high bandwidth facilities. The cost of low volume usage would in many cases exceed the ability to pay for it. Therefore, universal service support and health care discounts are necessary if rural health care is to take advantage of modern telecommunications technology. The relative cost and benefit of supporting technology and services which depend on bandwidth higher than 1.544 Mbps should be driven by the need for service rather than a costing formula.

Internet access in rural areas is becoming more widespread, but that access is frequently by modem and often at speeds as low as 1200 bps because of the extensive analog carrier present in some local loops. Improvements may be hampered by problems often found in low-density high-cost areas. Internet service providers are not responsible for the local loop upgrades which would allow higher speed access; and local exchange service providers are faced with the fact that there is an inverse relationship of costs to subscriber density in rural exchanges. On the question of the costs which would likely be incurred if toll free access were provided to ISPs for Internet health care services, we believe that the cost analysis should proceed in relatively the same manner as the costs of providing Extended Area Service (EAS) are now reviewed and determined. For example, EAS implementation traditionally requires that the loss of toll revenues be calculated and added into an EAS surcharge for the affected exchanges. In applying this paradigm to Internet access in the health care services context, we should make sure that we are determining the actual costs involved in providing Internet service rather than settling for a less useful determination based on the loss of embedded revenue advocated by some commenters on the subject.

5. **Administration.** One of the Act's most important universal service principles is that federal funding mechanisms be specific, predictable and sufficient.

In the past, the WPSC has strongly advocated that the National Exchange Carrier Association (NECA) administer the federal fund and that NECA is well qualified to carry out the Act's mandate. The mechanism must specifically assign funds to eligible telecommunications carriers serving high cost areas. The mechanism must be explicit, replacing any existing implicit funding devices; and it must not invite "gaming" the system. Federal universal service support must generate enough money to fully fund the federal support amount. Any proposed program which could fall short of this 100% funding target would be impractical and inefficient and should not be seriously considered.

A final note. The Act clearly calls for sustained cooperation between the states and the federal government. The WPSC believes that continuing federal/state cooperation and information sharing should be built into the federal universal service fund mechanism. States have an important role to play in making the federal fund efficient, fair and easily administered. We believe the dialogue should be ongoing, and that the fund mechanism should recognize this. It should clearly survive the promulgation of universal service fund rules.

Respectfully submitted this 18th day of December, 1996.

PUBLIC SERVICE COMMISSION OF WYOMING

Steve Ellenbecker

STEVE ELLENBECKER, Chairman

Doug Doughty

DOUG DOUGHTY, Deputy Chairman

Kristin H. Lee

KRISTIN H. LEE, Commissioner

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on December 18, 1996, I served true and complete copies of the within and foregoing Comments of the Wyoming Public Service Commission in the above-captioned matter by [a] transmitting the original and four copies thereof to the Office of the Secretary of the Federal Communications Commission by Federal Express, [b] transmitting an additional copy thereof to the International Transcription Service by Federal Express, [c] serving copies thereof on each person otherwise named on the service list attached to the Public Notice discussed hereinabove by depositing the same in the United States Mail, first class postage prepaid, and [d] by transmitting them by Federal Express on computer diskette to the Commission's Common Carrier Bureau in the specified format.

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